

AS COVID-19 EXPANDS THE DEFINITION OF THE WORKPLACE TO INCLUDE THE LOUNGE ROOM; WE ARE REMINDED THAT THE WORK FROM HOME BOUNDARIES ARE NOT NECESSARILY CLEAR

2 JUNE 2020 | WORKERS' COMPENSATION

In this decision, the NSW Supreme Court of Appeal upheld the decision of the Workers' Compensation Commission in awarding death benefits to the children of a deceased worker who was murdered by her partner/colleague whilst they were both working from home.

IN ISSUE

- Whether the deceased suffered an injury in the course of her employment;
- Whether the deceased suffered an injury that arose out of her employment; and
- Whether the deceased's employment was a substantial contributing factor to her injury.

THE BACKGROUND

The deceased and her de facto partner worked for their family company as financial advisors from their family home. In June 2010, the deceased's de facto partner killed her after he suffered paranoid delusions that she was conspiring with the government to take away his clients and financial advisor accreditation by spying on him, accessing his computer and recording his conversations. The evidence showed that the deceased was killed in the bedroom of their home and that she was wearing her pyjamas at the time of the attack. Whilst there was some uncertainty as to the precise time of death, it was estimated to be between 8am and 10am.

The deceased's children made claims for workers' compensation on the basis that the deceased died as a result of an injury arising out of and in the course of her employment. The insurer disputed the claims.

THE DECISION OF THE WORKERS' COMPENSATION COMMISSION

At first instance, the Arbitrator found that the injury, which caused the deceased's death, arose out of and in the course of her employment, and that her employment was a substantial contributing factor to her injury.

The insurer appealed against that determination.

Dismissing the appeal, the Deputy President found that it was open on the evidence for the Arbitrator to find that there was a causal connection between the attack and the nature, conditions and obligations of the deceased's employment, and the fact that an appellate Court may form a different opinion, is not enough to disturb a factual finding of the Commission. The insurer appealed to the NSW Court of Appeal.

THE ISSUE ON APPEAL

- Whether the Deputy President erred in finding that there was evidence capable of supporting the factual findings made by the arbitrator.

THE DECISION OF THE NSW COURT OF APPEAL

In a unanimous decision to dismiss the appeal, the Court found that there was no legal error by the Deputy President to dismiss the appeal.

The appellant argued that the Arbitrator erred in finding that the deceased's death occurred in the course of her employment given the time of death was a range of time within and outside her usual working day, there was no evidence that the deceased had started work for the day or that she was engaged in work related activities and there was no evidence that she was 'on call' at the time she was attacked.

His Honour Basten JA referred to the principle relied upon by the Arbitrator, that when determining if an injury was suffered in the course of a person's employment, it is necessary to consider the temporal connection between the employment and the injury sustained, and that the course of employment can extend beyond a worker's normal hours and place of work. There was evidence that the deceased often worked from the bedroom, that she was required to be available to take work calls before 9am, and on the morning before the attack, she had taken a call at 7.33 am, which was likely to have been work related. His Honour found that there was sufficient evidence to support a finding the deceased was either performing work related duties or was on-call at the time of the attack, and therefore there was a temporal connection between the employment and her death to establish that she was in the course of her employment.

In regards to whether the deceased's injury arose out of her employment, the appellant argued that the question of whether there was a causal connection between the deceased's employment and her death had not been considered. His Honour disagreed and found that the evidence supported a finding that there was a causal link between the de facto partner's attack and his common employment with the deceased, given his paranoid beliefs related to the way the deceased performed her work duties.

In addressing the requirement that the employment had a substantial contributing factor to the injury, his Honour noted that whilst the purpose of this consideration is to strengthen the causal connection between the employment and the injury, the issues are closely aligned with those considered under the element that the injury needs to arise out of the employment.

The appellant argued that the Arbitrator failed to take into account the fact that the

deceased's role was in clerical work in a peaceful environment, that there was nothing in her employment that placed her at risk of a sudden and violent attack, and that her de facto partner's delusions were not part of her employment because by definition, they were false. The Court however found that the Arbitrator had taken into account, and had rejected, those propositions and while the deceased did undertake clerical work and her environment might have generally been peaceful, this was not the case on the day she was killed by her co-worker. Furthermore, given the deceased's duties required her to work with her de facto partner who had a psychotic episode, attacked and killed her, it cannot be said that there was nothing in the employment that placed the deceased at risk of a sudden and non-violent attack.

IMPLICATIONS FOR YOU

With more employees than ever working from home, employers must be aware that the circumstances of each employee is different and not every worker will work from home within the boundaries of 9am to 5pm at an ergonomic desk. For example work from home for many people can be working in the lounge room while dealing with the stress associated with home schooling young children. As we move towards a post COVID-19 world, employers must be alive to the issues that working from home can bring, and when considering whether to accept a claim for compensation, the focus for an employer must be whether there is a causal connection between the incident giving rise to the injury and the worker's employment.

[Workers Compensation Nominal Insurer v Hill \[2020\] NSWCA 54](#)

AUTHORS



DEMI PETERS
SOLICITOR

+61 3 6218 8816
demi.peters@bnlaw.com.au